

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

In the Matter of

Amendment of Section 73.202(b))	
Table of Allotments)	MB Docket No. 05-282
FM Broadcast Stations)	RM - 11229
(Rockmart and Aragon, Georgia, and)	
Lynchburg and Chattanooga, Tennessee))	
)	

To: Office of the Secretary
Attn: Assistant Chief, Audio Division
Media Bureau

RESPONSE TO REPLY COMMENTS

J. L. Brewer Broadcasting of Cleveland, LLC, licensee of Station WAYA(FM), Spring City, Tennessee, and J. L. Brewer Broadcasting, LLC, licensee of Station WMPZ(FM), Ringgold, Georgia, ("Brewer"), by its counsel, hereby responds to the Reply Comments submitted by Tri-State Communications, Inc. ("Tri-State") on December 20, 2005. Tri-State alleges two defects with Brewer's Counterproposal (filed on December 5, 2005). First, Tri-State claims that Brewer's proposal to allot Channel 228A at Harrison, Tennessee does not provide sufficient line-of-sight into Harrison. Second, Tri-State claims that Harrison is not independent of the Chattanooga Urbanized Area. Tri-State, however, does not cite any case law to support either allegation. This is not surprising because the case law on both of these issues clearly supports the fact that Brewer's proposal does provide the necessary line-of-sight to Harrison and that Harrison is an independent community.¹ Thus, the Commission should dismiss Tri-State's

¹ Brewer would like the Commission to be aware that Brewer did make a good faith effort to enter into an agreement with Tri-State to reimburse it for the change of Station WLJA-FM from Channel 228A to Channel 266A in accordance with *Circleville, Ohio*, 8 FCC 2d 159 (1967). However, Tri-State rejected the offer and instead prematurely filed its Reply Comments.

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Reply Comments and issue a Public Notice on Brewer's Counterproposal. In support hereof, Brewer states as follows:

I. Brewer's Proposal to Allot Channel 228A at Harrison, Tennessee Complies with the Commission's Line-of-Sight Rules and Policies.

1. Tri-State claims that Brewer's proposal to allot Channel 228A at Harrison, Tennessee does not provide sufficient line-of-sight to Harrison in violation of Section 73.315 of the Commission's Rules. In support of its claim, Tri-State submitted four terrain profiles on azimuths 84-87 degrees, which purport to show a line-of-sight obstruction. However, Tri-State's evidence, at best, shows some minor shadowing to a small section of Harrison from the proposed site. This is not a violation of Section 73.315, which requires a "major obstruction" for a line-of-sight issue.² In addition to misinterpreting this rule, Tri-State does not cite any case law to support its claim. This is not surprising because the case law on this issue clearly supports the fact that Brewer's proposal to allot Channel 228A at Harrison provides the required line-of-sight to Harrison and complies with Section 73.315.

2. Under established case law, if, due to terrain, line-of-sight becomes an issue with a proposed allotment, the FCC requires that the proponent demonstrate that a 70 dBu signal will extend beyond the proposed community. See *Halls Crossroads, Tennessee, et al.*, DA 05-3059, ¶10 (2005); *The Dalles* 19 FCC Rcd 10068, ¶¶16-17 (2004); *Jackson and Salyersville, Kentucky*, 17 FCC Rcd 4662, 4664 (2002); *Madison, Indiana*, 14 FCC Rcd 9518, 9519 (1999); *Vacaville and Middletown, California*, 4 FCC Rcd 8315, ¶13 (1989). In all of these cases the line-of-sight was questioned by an opponent but the Commission determined that the proposals complied with Section 73.315 because the proponents were able to show that, based on the standard prediction and the Longley-Rice methods, the proposed 70 dBu signals extended well beyond the respective

² 47 C.F.R. § 73.315(b).

communities. For example, in *Jackson*, the Commission held, citing *Vacaville*, that a reference site that cannot provide direct line-of-sight coverage is still suitable where the proponent demonstrated that the transmitted signal will exceed 70 dBu over the entire principal community. *Jackson*, 17 FCC Rcd at 4664. More recently in *The Dalles* and *Halls Crossroads* decisions, the Commission held that allotments were technically viable when the station, from the proposed transmitter site, would place a 70 dBu contour over 100% of the proposed community. *Halls Crossroads*, at ¶10; *The Dalles* 19 FCC Rcd at ¶¶16-17.

3. Here, Brewer's proposal for Channel 228A not only provides line-of-sight to Harrison (because Tri-State has not demonstrated a "major obstruction"), but also provides 70 dBu coverage well beyond the community. The proposed transmitter site is located approximately 5 kilometers from Harrison. As shown in the attached Technical Report, both the standard predicted 70 dBu contour and the Longley-Rice 70 dBu contour of WMPZ(FM) extend well beyond the boundaries of Harrison and thus proves that Brewer's proposal will provide more than adequate coverage to Harrison. Therefore, Brewer's proposal is in compliance with Section 73.315 of the Commission's Rules.

4. Finally, in addition to its flawed legal analysis, Tri-State also makes an incorrect assumption concerning the technical data for the proposed WMPZ(FM) site. Tri-State assumes that the proposed tower for WMPZ(FM) will be 174 meters AGL. See Reply Comments, Technical Comments. Based on this assumption, Tri-State attempts to prove that the alleged terrain obstruction prevents adequate line of sight coverage to the community of Harrison. However, while Brewer specified a 174 meter tower in its Counterproposal, it is prepared to

build a tower for WMPZ(FM) that is 205 meters AGL.³ See Technical Report. This tower height will decrease any shadowing alleged by Tri-State.

II. Harrison, Tennessee is an Independent Community.

5. Tri-State claims that Harrison is dependent on the Chattanooga Urbanized Area under the Commission's *Tuck* policy. See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*"). Tri-State ignores the fact that this relocation does not implicate the Commission's policy concerning the migration of stations from rural areas to urban areas because both Ringgold, Georgia and Harrison, Tennessee are located in the Chattanooga, Tennessee Urbanized Area.⁴ Brewer asserted this in its Counterproposal, but nevertheless provided a *Tuck* showing because Harrison is clearly independent of the Chattanooga Urbanized Area. Thus, even if the Commission chooses to apply *Tuck* to this case, Tri-State's claims do not disprove Harrison's independence.⁵

6. In its Counterproposal, Brewer provided conclusive evidence that Harrison is independent of the Chattanooga Urbanized Area. This included the fact that, (i) Harrison is home to approximately 100 business and commercial establishments; (ii) there are two newspapers and a number of radio stations that provide local media coverage to the community of Harrison; (iii) Harrison has a rich history; (iv) a number of residents and business owners

³ This increase in tower height is permissible under the Commission's Rules. Specifically, Section 73.211(b)(2) of the Commission's Rules authorizes a Class A station to exceed the standard HAAT if its ERP is reduced such that the reference distance does not exceed the class contour distance.

⁴ See e.g., *Ardmore, Alabama, et. al.*, 17 FCC Rcd 16332 (2002), *petition for reconsideration denied* 18 FCC Rcd 6390 (2003) (the Commission stated that its concern with migration to Urbanized Areas is lessened by the fact that a reallocation proposal involves reallocating a channel from one community in an Urbanized Area to another community in same Urbanized Area); *Boulder and Lafayette, Colorado*, 11 FCC Rcd 3632 (1996) (granting a proposal to reallocate a channel from one community in an Urbanized Area to another community in same Urbanized Area without a *Tuck* showing); *East Los Angeles, Long Beach and Frazier Park, California*, 10 FCC Rcd 2864 (1995) (stating that the concern with migration to Urbanized Areas does not exist when a proposal involves reallocating a channel from one community in an Urbanized Area to another community in same Urbanized Area).

⁵ In its research on the *Tuck* factors, Tri-State relied on a search engine called "Wikipedia." This search site has been criticized as inaccurate on numerous occasions.

believe that Harrison is an independent community;⁶ (v) Harrison is home to a number of local governmental organizations; (vi) Harrison has a post office and zip code; (vii) Harrison has schools and a volunteer fire department; (ix) Harrison has health care facilities and local transportation; and (x) Harrison has municipal services that are not provided by Chattanooga. Tri-State does very little to refute this evidence. Instead, Tri-State claims that it is not enough to demonstrate independence. This argument, however, is contrary to the Commission's case law.

7. While it is true that Harrison is a CDP and may not have all of the attributes of other independent communities, the Commission does not require a community to satisfy all eight *Tuck* criteria to be independent. See *Halls Crossroads, Tennessee, et al.*, DA 05-3059, ¶12 (2005); *Wallace, Idaho and Lolo, Montana*, 14 FCC Rcd 21110 (1999); *Parker and Port St. Joe, Florida*, 11 FCC Rcd 1095, ¶9 (1995). For example, in *Halls Crossroads*, the Commission held that the community of Halls Crossroads was independent of the Knoxville Urbanized Area when five of the eight *Tuck* factors supported a finding of independence. Here, Brewer has submitted conclusive evidence that the community of Harrison satisfies at least five and most likely all eight of the *Tuck* factors.

8. Tri-State attempts to refute Brewer's evidence in regard to individual *Tuck* factors is also contrary to established case law. For example, Tri-State claims that the presence of approximately 100 businesses in Harrison does not prove that residents of Harrison work in Harrison. This claim simply ignores the Commission's decisions in numerous cases. See, e.g., *Seymour and Sellersburg, Indiana*, 19 FCC Rcd 15312, ¶ 7 (2004); *Lebanon and Speedway, Indiana*, 17 FCC Rcd 25064, ¶ 4 (2002) (the presence of many employers in the community alleviates any concern that the community is dependent on the urbanized area for employment of

⁶ Brewer submitted statements of residents and businesses owners to support this point.

its residents); *Clovis and Madera, California*, 11 FCC Rcd 5219, ¶ 19 (1996) (given the large number of businesses attributed to the community it is plausible that the community is capable of providing ample employment opportunities to its residents).

9. Tri-State also claims that Harrison has no local governmental services and that many of its services are provided by Hamilton County. However, this ignores the evidence presented by Brewer that Harrison has a post office, schools, a volunteer fire department, a state park, and a vocational center. Also, Harrison's municipal services are not provided by Chattanooga, which is an important point that is overlooked by Tri-State. See *D'Iberville and Wiggins, Mississippi*, 10 FCC Rcd 10796, ¶ 5 (1995) (community had schools, library, volunteer fire department, and police services provided by the county).

10. Finally, Tri-State also asserts that because the *Hamilton County Herald* and *Signal Mountain Mirror* are not strictly Harrison papers, they cannot cover the local needs and interests of the community of Harrison. However, there is no basis for Tri-State's implicit assertion that a paper needs to be published in a community in order to serve that community. The fact that Tri-State offers no support for this argument is telling. See *Seymour and Sellersburg, Indiana*, 19 FCC Rcd 15312, ¶ 7 (2004); *Crisfield, Maryland, Belle Haven, Cape Charles, Exmore, Nassawadox, and Poquoson, Virginia*, 18 FCC Rcd 19561, ¶ 13 (2003); *Screven, Rincon, and Statesboro, Georgia, and Palatka and Middleburg, Florida*, 17 FCC Rcd 20485, ¶ 5 (2002); *Elizabeth City, North Carolina, and Chesapeake, Virginia*, 9 FCC Rcd 3586, ¶ 20 (1994) (in each of these cases the Commission found that a local newspaper adequately covers the communities' local needs and interests even though the paper was not published in the community at issue).

III. Conclusion.

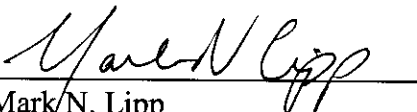
11. It is clear, that Tri-State has raised nothing in its Reply Comments that warrant dismissal of Brewer's Counterproposal. Based on established case law, Brewer's proposal provides the necessary line-of-sight to Harrison and demonstrates that Harrison is an independent community. Thus, the Commission must dismiss Tri-State's Reply Comments and promptly place Brewer's Counterproposal on Public Notice.

Respectfully submitted,

J. L. BREWER BROADCASTING OF
CLEVELAND, LLC

J. L. BREWER BROADCASTING, LLC

By:



Mark N. Lipp
Scott Woodworth
Vinson & Elkins L.L.P.
1455 Pennsylvania Ave, NW
Suite 600
Washington, DC 20004-1008
(202) 639-6500

January 6, 2006

Their Counsel

**TECHNICAL REPORT IN SUPPORT OF A RESPONSE TO
TRI-SATE COMMUNICATIONS, INC. COMMENTS REGARDING
THE BREWER COUNTERPROPOSAL IN MB DOCKET NO. 05-282**

December 29, 2005

This report has been prepared in response to the Tri-State Communications, Inc. (Tri-States) comments regarding the J.L. Brewer Broadcasting, LLC (Brewer) proposal to reallocate station WMPZ to Harrison, TN on FM channel 228A. Tri-States alleges that "...terrain obstacles will prevent this proposed station from providing line-of-sight 70 dBu coverage to Harrison" (at paragraph 3). However, Tri-States did not submit any showings or calculations as the Commission has required in previous cases (e.g. The Dalles, OR et al FCC 04-118 at paragraph 17) that the minor terrain obstacles would prevent the delivery of a 70 dBu (50, 50) signal over all of Harrison, TN. Tri-State only submitted four terrain profiles on azimuths 84 to 87 degrees characterizing them as demonstrating "severe pockets of shadowing". In fact, the terrain obstacles depicted are minor, and do not qualify as a major obstacle as contemplated by Section 73.315.

Brewer's Harrison proposal will provide a 70 dBu signal over all of Harrison:

The Commission has held in several cases that line of sight is not required over an entire community. In fact, in the Madison, IN Report and Order (MM Docket No. 98-105) the Commission stated:

Our studies further indicate that considering the terrain obstruction between the proposed site for channel 266A and the community of Madison, the 70 dBu signal will be attenuated once it reaches Madison, but in any event it will not fall below the required level of service over the city of Madison (paragraph 5).

Furthermore, in the Vacaville and Middletown, CA First Report and Order (MM Docket No. 88-491), the Commission clearly enunciated the fact that line of sight is not required:

Where it is alleged that a site cannot be found that allows line-of-sight coverage over the community or a transmission path free of a major obstruction, as required by Section 73.315 of the Commission's rules, the proponent must demonstrate by an engineering showing that the received signal strength as transmitted from the site will exceed 70 dBu and will encompass the entire community. (paragraph 13)

In this instance, the proponent, Brewer, has conducted further analyses which clearly establish that the proposed channel 228A facility will provide all of Harrison, TN with a 70 dBu or greater signal. These analyses were conducted at the same site proposed in the counterproposal (N35-07-06 W 85-14-29) at a distance of 5.2 km to the closest point on the Harrison boundary and 9.4 km to the community reference point. It is possible to move the reference point approximately one km east further increasing the

Charles M. Anderson Associates

signal level over Harrison. This analysis was conducted using V-Soft Communications' Probe 3 software, a recognized standard in the industry based on the Department of Commerce-NTIA algorithms, and the V-Soft 30 second terrain database. *The Longley-Rice parameters used are standard for the geography involved, and are enumerated on the individual exhibits.*

Exhibit E1 demonstrates that the 70 dBu contour calculated using the FCC standard methodology will cover the entire community. This study uses a 6 kW/ 100 meter HAAT facility. A 174 meter tower was assumed, and the height above average terrain was calculated using the standard eight (8) radials methodology.¹

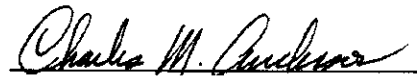
Exhibit E2A also demonstrates that a Longley-Rice calculated 70 dBu contour based on the first occurrence of the signal level reaches well past the Harrison city boundaries.

Exhibit E2 demonstrates that the Longley-Rice contour calculated at the most accurate level of .1 km square cells covers the entire community of Harrison.

The calculation of the area within Harrison that has a clear line of sight to the proposed 228A facility was performed using the Probe 3 line-of-sight feature, and again using .1 km square cells. This calculation shows that 93.7% of the population and 90.9% of the area have line-of-sight from the proposed facility. Areas were determined using the Probe 3 polygon feature. A 205 meter tower was used for this study as permitted for a Class A facility for the purpose of line of sight analysis in the recent Halls Crossroads and Lake City, TN case (MB Docket No. 03-120 Report and Order). The proponent commits to the construction of a 205 meter tower if required.

Conclusion:

It is concluded that the proposed 228A allocation will provide a 70 dBu or greater signal to the entire community of Harrison, TN in accordance with Section 73.315 and established Commission policies and precedents.



1519 Euclid Avenue

Bowling Green, KY 42103

270-782-0246

270-793-9129 FAX

charlesmanderson@bellsouth.net

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¹ There is considerable flexibility in the selection of a site for the proposed WMPZ 228A facility that will meet spacing requirements. In fact, it may be located even closer to Harrison thereby increasing the signal level (e.g. N 35-08-06 W 85-13-41).

E1 WMPZ

Latitude: 35-07-06 N
Longitude: 085-14-29 W
ERP: 6.00 kW
Channel: 228
Frequency: 93.5 MHz
RC AMSL Height: 378.2 m
Site Elevation: 204.2 m
Horiz. Pattern: Omni
Vert. Pattern: No
Prop Model: None

UNIFORM 16.2 KM CLASS A 70 DBU

E1

228A 6 KW/ 100 METERS HAAT
USING STANDARD 8 RADIAL AVERAGE
PLOT OF 70 DBU BASED ON
FCC STANDARD METHOD

WMPZ

FCC 70 DBU TERRAIN
BASED CONTOUR

HARRISON, TN CITY BOUNDARIES

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Scale 1:250,000
0 3 6 9 km

E2A WMPZ

Latitude: 35-07-06 N
Longitude: 085-14-29 W
ERP: 6.00 kW
Channel: 228
Frequency: 93.5 MHz
RC AMSL Height: 378.2 m
Site Elevation: 204.2 m
Horiz. Pattern: Omni
Vert. Pattern: No
Prop Model: Longley/Rice
Climate: Cont temperate
Conductivity: 0.0050
Dielec Const: 15.0
Refractivity: 311.0
Receiver Ht AG: 9.1 m
Receiver Gain: 0 dB
Time Variability: 50.0%
Sit. Variability: 50.0%
ITM Mode: Broadcast

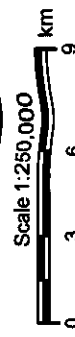
E2A

228A 6 KW/ 100 METERS HAA T
USING STANDARD 8 RADIAL AVERAG
PLOT OF CALCULATED LONGLEY-RICE
70 DBU CONTOUR AT FIRST INSTANCE

WMPZ

70 DBU LONGLEY-RICE
AT FIRST INSTANCE ON
EACH OF 360 RADIALS

HARRISON, TN CITY BOUNDARIES



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E2 WMPZ

Latitude: 35-07-06 N
Longitude: 085-14-29 W
ERP: 6.00 KW
Channel: 228
Frequency: 93.5 MHz
RC AMSL Height: 378.59 m
Site Elevation: 204.2 m
Horiz. Pattern: Omni
Vert. Pattern: No
Prop Model: Longley/Rice
Climate: Cont temperate
Conductivity: 0.0050
Dielec Const: 15.0
Refractivity: 311.0
Receiver Ht AG: 9.1 m
Receiver Gain: 0 dB
Time Variability: 50.0%
Sit. Variability: 50.0%
ITM Mode: Broadcast

> 70.0 dBu

E2 228A 6 KW/ 100 METERS HAAT
STANDARD 8 RADIAL AVERAGE

LONGLEY-RICE 70 DBU OR GREATER IS
PLOTTED IN GRAY. THE STUDY USED .1 KM
CELLS TO CALCULATE THE SIGNAL. NOTE THAT
ALL OF HARRISON RECEIVE A 70 DBU SIGNAL.



WMPZ

HARRISON, TN CITY BOUNDARIES

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Scale 1:1 00,000
0 1 2 3 km

E3 WMPZ

Latitude: 35-07-06 N
Longitude: 085-14-29 W
ERP: 6.00 kW
Channel: 228
Frequency: 93.5 MHz
RCAMSL Height: 409.2 m
Site Elevation: 204.2 m

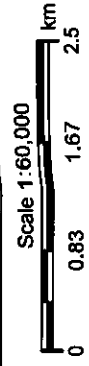
E3 HARRISON 228A
LINE OF SIGHT STUDY
RECEIVER HEIGHT = 9.1 M
TRANSMITTER HEIGHT AGL = 205M
CELL SIZE = .1 KM

HARRISON, TN CITY BOUNDARIES
23.66 SQ KM

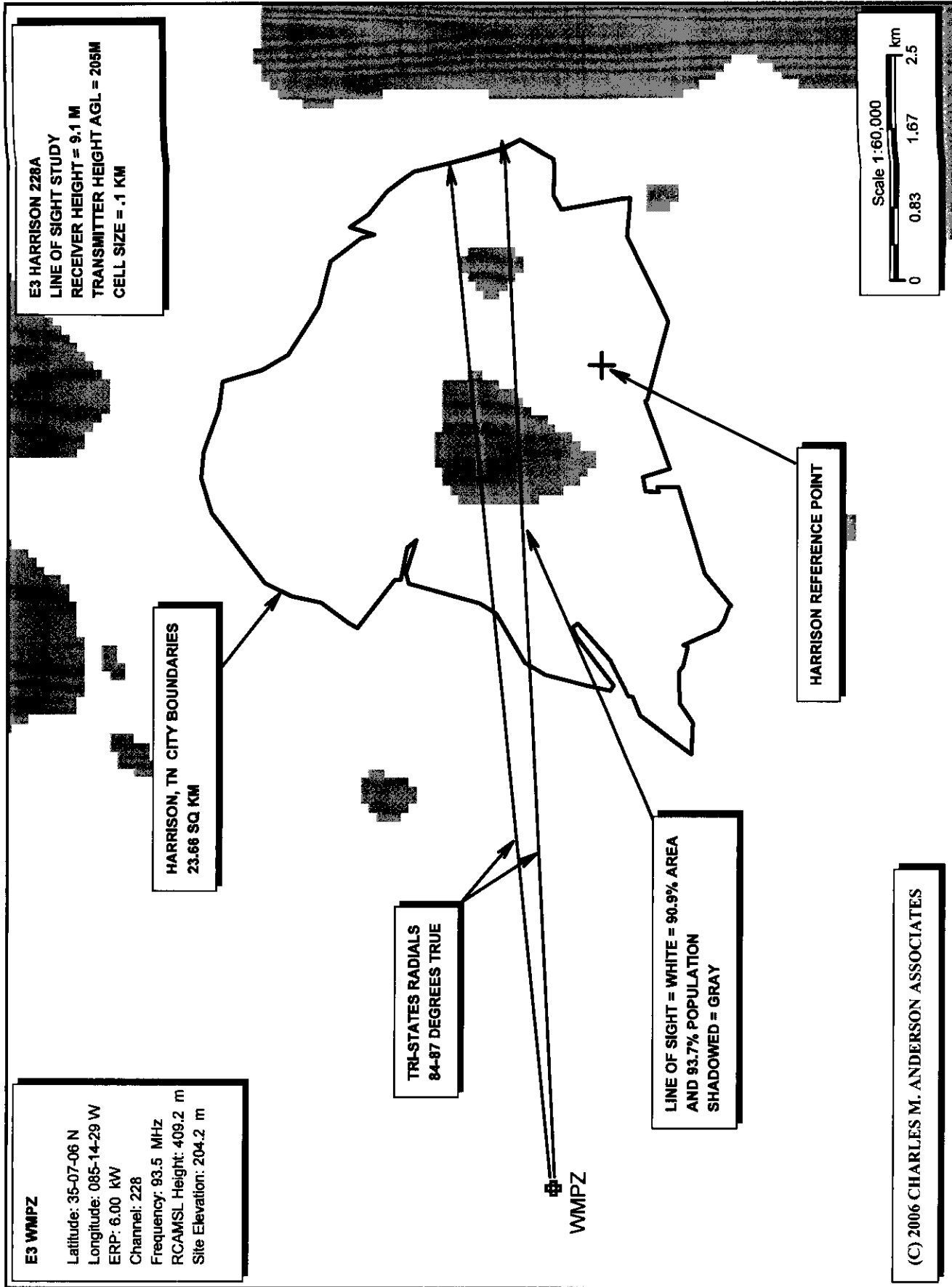
TRI-STATES RADIALS
84-87 DEGREES TRUE

LINE OF SIGHT = WHITE = 90.9% AREA
AND 93.7% POPULATION
SHADOWED = GRAY

HARRISON REFERENCE POINT



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CERTIFICATE OF SERVICE

I, Diana Gonzales in the law firm of Vinson & Elkins, do hereby certify that I have on this 6th day of January, 2006, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "**Response**" to the following:

*Deborah A. Dupont
Audio Division, Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Lauren A. Colby
Law Office of Lauren A. Colby
10 East 4th Street
Frederick, MD 21701
(*Counsel to Woman's World Broadcasting, Inc.*)

Dennis J. Kelly
Law Office of Dennis J. Kelly
PO Box 6648
Annapolis, MD 21401
(*Counsel to Tri-State Communications, Inc.*)

Brian M. Madden
Leventhal Senter & Lerman, PLLC
Suite 600
2000 K Street, NW
Washington DC 20006
(*Counsel to Entercom Greenville License, LLC*)

Citadel Broadcasting Company
7201 W. Lake Mead Blvd.
Suite 400
Las Vegas, NV 89128

Richard Swift
Irwin Campbell & Tannenwald, PC
1730 Rhode Island Avenue, NW
Suite 200
Washington DC 20036-3101
(*Counsel to Bart Walker*)


Diana Gonzales

* HAND DELIVERED